Restriction should not be required.

The inventions as described in the claims are neither independent nor distinct. In fact, the inventions as claimed arise from the same inventive effort. Where inventions are neither independent nor distinct, restrictions should not be required. Where inventions arise from the same inventive effort, restriction should not be required. See MPEP 802.

MPEP 802.01 points out that a sub-combination and a combination are not independent inventions, and that a process and an apparatus used in the practice of the process are not independent inventions. That same section points out that independent means that there is no disclosed relationship between the subjects disclosed.

The examiner has not made any requirement based on the subject matter being independent. Therefore it is understood that the examiner concedes that the subject matter is not independent.

The examiner's requirement for restriction is based upon his holding that the subjects are distinct. That is, as pointed out in Section 802.01, the examiner has held that the subject matter as claimed:

> are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER.

> The examiner has held under Section 803 that the claimed inventions:
> are able to support separate patents and they are ... distinct (MPEP Section 806.05-806.05(i)).

> However, Section 803 unequivocally states:
> If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

So that Section 803 makes its point clearly, the serious burden requirement is repeated under the title:

CRITERIA FOR RESTRICTION BETWEEN
PATENTABLY DISTINCT INVENTIONS

Section 803 goes on to state that there are two criteria for a restriction requirement: one, that the inventions must be distinct as claimed; and two, that there must be a serious burden on the examiner if restriction were not required.

Section 803 goes on to state under GUIDELINES that an examiner must provide reasons and/or examples to support conclusions. The examiner has never stated that there would be a serious burden on the examiner if restriction were not required. Indeed, there should be no serious burden on the examiner. The examiner in this case is a senior examiner and is well skilled in examining collecting solar energy and installing collectors.

The subclasses the examiner has cited are all close together and are all within the subclasses which the examiner regularly searches, and all require searching. Indeed, it would not be unreasonable for the examiner to search three subclasses that were close together. Therefore, restriction should not be required.

With regard to the examiner's specific points, in the following paragraphs it can be seen that restriction is not proper.

Groups I and II inventions are not distinct. Claim 11, for example, depends from and is substantially similar to Claim 1. Both groups result from the single inventive effort. Claim 11, for example, sets forth the specifics of the batch method of making claim 1. The apparatus as claimed in claim 11 includes the details of claim 1. The two-way distinctiveness required by 806.05(c) cannot be established. The invention as claimed in claim 11 requires the structure of claim 1 as claimed. There is no separate classification, status or field of search as required by

806.05(c), because any subclass searched by the examiner for Group I should be searched by the examiner for Group II. Identical subclasses would have to be examined in both cases.

Inventions I and II are related because they all require the composition of Group I claims.

The inventions of Groups I and II are not different combinations in that they do not have "different modes of operation" as required by 806.04. Moreover, where inventions are related as disclosed but are not distinct as claimed, restriction is never proper (MPEP 806). The inventions are not distinct as claimed. Moreover, there is no serious burden on the examiner because all of the subclasses and all of the inventions as claimed should be checked in the same subclasses.

MPEP 806 provides that if the inventions are not distinct as claimed, restriction is never proper.

The method as claimed in Group II claims is not distinct from the composition as claimed in the Group I claims. The method claims 11-15 require the same composition as in claims 1-10 and 16. For example, the method as claimed in claim 11 (Group II) is not distinct from the composition as claimed in claim 1. The examiner has provided no examples. Moreover, Section 806.05(h) emphasizes "as claimed" and falls under the cautions of 806 and 806.05, both of which state, "where the inventions are related as disclosed but are not distinct as claimed, restriction is never proper".

In addition, in the present case the particular criteria and guidelines of 803 must be followed in that there must be a serious burden on the examiner if restriction were not required. In the present case, both of the groups must be searched in the same subclasses which the examiner ordinarily searches. All are properly classified and searched together, and the search for one group would not be complete without searching all of the same subclasses.

There should be no hardship on the examiner to complete examination for both groups, because the same structural installation is required in both groups.

The examiner has not adequately considered and compared the composition as claimed and the method as claimed.

It is impossible that (1) the method as claimed can be practiced with another and materially different composition than the composition as claimed.

The claims are different expressions of the single invention, and are neither independent nor distinct.

CONCLUSION

Reconsideration and allowance of the application are requested. Reconsideration and withdrawal of the restriction requirement are requested.

Respectfully,

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